

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ELLIOTT PAYNE RILEY,
(TDCJ-CID #784600)

Plaintiff,

vs.

BRAD LIVINGSTON,

Defendant.

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CIVIL ACTION H-14-2392

MEMORANDUM ON DISMISSAL

Elliott Payne Riley, a Texas Department of Criminal Justice inmate, sued in August 2014, alleging civil rights violations resulting from the denial of adequate medical care. Riley alleges that he has a seizure disorder, has suffered a stroke, and lost his balance in his left foot. Riley has neither paid the \$350.00 filing fee nor submitted an application to proceed without prepaying fees, but from his litigation history, the court presumes that he intends to do so. Riley sues Brad Livingston, the Director of the TDCJ. The threshold issue is whether Riley's claims are barred by the three-strikes rule. He seeks \$10,000 in compensatory damages.

A prisoner is not allowed to sue in federal court without prepaying fees if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim on which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Before filing this case, Riley had at least three suits dismissed as frivolous. *Riley v. Attorney General for the State of Tex.*, 4:06-2906 (S.D. Tex.) (dismissed as malicious on September 29, 2006); *Riley v. Attorney General for the State of Tex.*, 4:05-2851 (S.D.

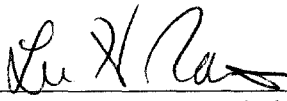
Tex.) (dismissed as malicious on January 13, 2006); and *Riley v. Sergeant Watts*, 4:05-4396 (S.D. Tex.) (dismissed as malicious on January 19, 2006).

In this case, Riley has not alleged that he is in imminent danger of serious physical injury. Riley is barred under 28 U.S.C. § 1915(g) from proceeding in this action.

Riley's request to proceed as a pauper, (Docket Entry No. 1), is denied. His complaint is dismissed. All pending motions are denied. Riley is warned that continued frivolous filings may result in sanctions.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or email to the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED on September 9, 2014, at Houston, Texas.



Lee H. Rosenthal
United States District Judge